

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 14, 2005 Session

EDWARD GAYLAND BELCHER v. GEORGIA HAMMOND BELCHER

Appeal from the Chancery Court for Grainger County
No. 01-105 Telford E. Forgety, Jr., Chancellor

No. E2004-02712-COA-R3-CV - FILED SEPTEMBER 23, 2005

The issue in this post-divorce case is whether there was an accord and satisfaction of a judgment awarded pursuant to a marital dissolution agreement. Georgia Hammond Belcher filed a petition to enforce the parties' marital dissolution agreement, and to hold her former husband, Edward Gayland Belcher, in contempt for failing to comply with its terms. Mr. Belcher responded that the parties had reached an accord and satisfaction whereby they orally agreed that Mr. Belcher would not pay Ms. Belcher the \$10,000 he owed her under the marital dissolution agreement, in return for Mr. Belcher allowing Ms. Belcher to move back into the marital residence and paying her living expenses in their attempt to reconcile. The parties subsequently lived together for approximately 2½ years, during which time Mr. Belcher paid, among other things, Ms. Belcher's living expenses. After the reconciliation attempt failed, Ms. Belcher filed her motion for contempt and to enforce the marital dissolution agreement. The chancellor ruled that Mr. Belcher proved an accord and satisfaction between the parties, and dismissed Ms. Belcher's petition. Finding that the evidence does not preponderate against the Chancellor's decision, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Clinton R. Anderson, Morristown, Tennessee, for the Appellant, Georgia Hammond Belcher.

Creed A. Daniel, Rutledge, Tennessee, for the Appellee, Edward Gayland Belcher.

OPINION

I. Factual Background and Issue for Review

The parties, Edward Gayland Belcher and Georgia Hammond Belcher, have been married and divorced twice. During their second divorce, the parties executed a marital dissolution

agreement and filed it with the trial court. The final decree of divorce, entered October 18, 2001, incorporated the terms of the marital dissolution agreement which provided in part as follows:

The parties own real property and personal property. The husband agrees to keep the marital residence and pay the debt. The husband agrees to pay the wife \$2,000.00 on October 1, 2001 and \$500.00 per month beginning on November 1, 2001 for a period of 24 months. These payments are in the nature of a property settlement and shall be paid to the wife.

On April 22, 2004, Ms. Belcher filed a petition to enforce the marital dissolution agreement and to hold Mr. Belcher in contempt for failing to comply with the agreement, alleging that “Mr. Belcher paid the \$2,000.00, and then he paid four payments of \$500.00 each. He has failed to since pay any payments.” The petition further stated that “[i]t is true that at the time he quit paying the parties had moved in together, but Mr. Belcher got her worker’s compensation money, and also \$500 as a down payment on Mr. Belcher’s truck.”

Mr. Belcher answered, raising the defense of accord and satisfaction and alleging that the parties orally agreed that he would not pay the \$500 monthly payments required by the marital dissolution agreement in return for allowing Ms. Belcher to move back into the marital residence with him, and for his agreement to pay her living expenses.

After a hearing, the chancellor found that Mr. Belcher had proved by a preponderance of the evidence that the parties had reached an accord and satisfaction, and dismissed Ms. Belcher’s petition.

Ms. Belcher appeals, raising the issue, which we restate, of whether the trial court erred in finding that the parties had reached an accord and satisfaction and because of their oral agreement, Mr. Belcher was relieved of his \$10,000 obligation under the marital dissolution agreement.

II. Standard of Review

We review the trial court’s findings of fact *de novo* upon the record of the proceedings below, with a presumption of correctness “unless the preponderance of the evidence is otherwise.” Tenn. R. App. P. 13(d); *see also Hass v. Knighton*, 676 S.W.2d 554 (Tenn. 1984). The presumption of correctness under Tenn. R. App. P. 13(d) “requires appellate courts to defer to a trial court’s findings of fact.” *Elliott v. Elliott*, 149 S.W.3d 77, 84 (Tenn. Ct. App. 2004). There is no presumption of correctness with regard to the trial court’s conclusions of law, and those conclusions are reviewed *de novo*. *Jahn v. Jahn*, 932 S.W.2d 939 (Tenn. Ct. App. 1996).

III. Accord and Satisfaction

A marital dissolution agreement “is essentially a contract between a husband and wife in contemplation of divorce proceedings.” *Gray v. Estate of Gray*, 993 S.W.2d 59, 63 (Tenn. Ct. App.

1998); *Johnson v. Johnson*, 37 S.W.3d 892, 896 (Tenn. 2001). The provisions of a marital dissolution agreement pertaining to the division of the marital estate “are essentially contractual, even after they have been judicially approved and incorporated into a divorce decree.” *Elliott v. Elliott*, 149 S.W.3d 77, 84 (Tenn. Ct. App. 2004).

An accord and satisfaction is also a type of contract and is governed by the law of contracts. *Cole v. Henderson*, 454 S.W.2d 374, 384 (Tenn. Ct. App. 1969); *R.J. Betterton Mgm’t. Servs., Inc. v. Whittemore*, 733 S.W.2d 880, 882 (Tenn. Ct. App. 1987). “All such a defense or a plea means is that the parties have come to another agreement in substitution of the one upon which the plaintiff sues, and that the substituted agreement has been executed.” *Inland Equipment Co. v. Tennessee Foundry & Machine Co.*, 241 S.W.2d 564, 565 (Tenn. 1951). The Tennessee Supreme Court set forth the elements and governing principles of the law regarding accord and satisfaction in the case of *Lytle v. Clopton* as follows:

An accord is an agreement whereby one of the parties undertakes to give or perform, and the other to accept in satisfaction of a claim, liquidated or in dispute, and arising either from contract or from tort, something other than or different from what he is or considers himself entitled to; and a satisfaction is the execution of such agreement.

* * *

To constitute a valid accord and satisfaction it is also essential that what is given or agreed to be performed shall be offered as a satisfaction and extinction of the original demand; that the debtor shall intend it as a satisfaction of such obligation, and that such intention shall be made known to the creditor in some unmistakable manner. It is equally essential that the creditor shall have accepted it with the intention that it should operate as a satisfaction. Both the giving and the acceptance in satisfaction are essential elements, and if they be lacking there can be no accord and satisfaction. The intention of the parties, which is of course controlling, must be determined from all the circumstances attending the transaction.

Lytle v. Clopton, 261 S.W. 664, 666-667 (Tenn. 1924) (quoting 1 C.J. *Accord and Satisfaction* §§ 1 and 16 (1914)).

It has been held by this court that the above principles apply equally where the obligation sought to be avoided by the defense of accord and satisfaction is contained in a judgment. *Heinze v. Severt*, No. E2002-01184-COA-R3-CV, 2003 WL 1868651 at *3 (Tenn. Ct. App. E.S., filed Apr. 10, 2003)(stating “[w]e have hitherto recognized the applicability of these rules with respect to accord and satisfaction of a judgment.”); *Stinnett v. Stinnett*, No. E2000-001210-COA-R3-CV, 2000 WL 1273880 at *6 (Tenn. Ct. App. E.S., filed Sept. 7, 2000)(stating “[w]hile here we are dealing with an alleged accord and satisfaction of a judgment rather than a contractual debt, the reasoning in *Ward* [regarding accord and satisfaction] still applies.”).

Whether there has been an accord and satisfaction is a question of fact to be determined by the trier of fact. *Helms v. Weaver*, 770 S.W.2d 552, 554 (Tenn. Ct. App. 1989); *Lindsey v. Lindsey*, 930 S.W.2d 553, 557 (Tenn. Ct. App. 1996); *Ward v. Wilkinson*, No. 01A01-9803-CH-0015, 1999 WL 221843 at *2 (Tenn. Ct. App. M.S., filed Apr. 19, 1999)(stating “[u]nless the evidence thereof is insufficient to submit to the jury or is undisputed and not open to opposing inferences, accord and satisfaction, including the various elements thereof, is ordinarily a question of fact to be determined by the jury or by the court where it is the trier of the facts.”).

Ms. Belcher argues on appeal that clear and convincing evidence should be required to demonstrate the affirmative defense of accord and satisfaction where the obligation sought to be avoided is formalized in the judgment of a court. She cites the case of *Lynch v. Cheney*, 561 P.2d 380 (Idaho 1977) as persuasive authority for this argument. However, it is well established in Tennessee jurisprudence that “[t]he party asserting the defense of accord and satisfaction has the burden of showing *by a preponderance of the evidence* that the parties intended to effect a satisfaction.” *Pinney v. Tarpley*, 686 S.W.2d 574, 578 (Tenn. Ct. App. 1984)(emphasis added); *Rhea v. Marko Constr. Co.*, 652 S.W.2d 332, 335 (Tenn. 1983); *Inland Equipment Co. v. Tennessee Foundry & Machine Co.*, 241 S.W.2d 564, 565 (Tenn. 1951); *R.J. Betterton Mgm’t. Servs., Inc. v. Whittemore*, 733 S.W.2d 880, 882 (Tenn. Ct. App. 1987). This court has previously applied the preponderance of the evidence standard in a case where a debtor sought to utilize the defense of accord and satisfaction to avoid an obligation imposed by a judgment. *Heinze v. Severt*, No. E2002-01184-COA-R3-CV, 2003 WL 1868651 at *3-4 (Tenn. Ct. App. E.S., filed Apr. 10, 2003).

Mr. and Ms. Belcher were the only persons to testify at the hearing. Mr. Belcher testified that the parties orally agreed that he would not pay the \$500 per month owed under the marital dissolution agreement if he would allow Ms. Belcher to return to living with him and provide for her living expenses. It is undisputed that after Ms. Belcher’s return, Mr. Belcher paid, among other expenses, \$1400 in Ms. Belcher’s dental bills; \$600 in her father’s funeral expenses; and more than \$1000 to get her car repaired. Ms. Belcher arranged to obtain credit for a new truck for Mr. Belcher because his credit was poor. She paid \$500 toward the purchase price of the truck, and she admitted that Mr. Belcher had paid all other expenses regarding the truck, and that he offered to repay her the \$500 but she refused.

Ms. Belcher testified that the parties did not reach a mutual agreement in substitution of the obligation imposed by the marital dissolution agreement, stating as follows:

Q: Did you ever make any agreement with him to forgive that property settlement or to give him any credits on it?

A: No, sir. We both spent between each other and spent on each other out of love, I thought. So, there were no mutual agreements of any kind, you take care of me and I take care of you, it was I’m glad you’re back home and I want you with me.

* * *

Q: After the divorce when was it you moved back in with him?

A: One month later, we were back together by the end of October.

Q: Then how long did you live together?

A: Two and a half years.

Q: After the divorce?

A: Yes.

Q: You went two and a half years back at that time?

A: Yes.

Q: Then you lived together as man and wife but you wasn't married?

A: Right.

Q: And he supported you, you moved back into the residence house, didn't you?

A: We just went through all kinds of agreements together. I didn't want him for his money, I had money, I loved him.

Q: *And you told him you didn't want him to pay this other and you wanted to move back in with him and you all make it, didn't you?*

A: *Yeah.* He said I could come home and he had flowers for me waiting on me, he had called me on my way from Georgia, to see if I was coming in.

* * *

Q: . . .And afterwards he kept paying the debts and the bills and what have you that you all had?

A: Yes, and I bought for him too.

Q: Now, after the divorce did you go immediately back to work?

A: No, for he told me not to, I didn't have to work.

Q: You didn't work any at that time, did you?

A: No, because he told me not to, I didn't have to work. He would take care of me the rest of my life. That's what he told me.

Q: And you all lived together two and a half months, two and a half years and then you left him and then you filed this lawsuit?

A: Yes, because I realized he's not going to change, my hopes for him changing are never going to happen.

[Emphasis added].

It is clear from our review of the record that the trial court, faced with conflicting testimony, made its decision based in large part upon its determination of the credibility of the parties. The trial court observed that Ms. Belcher did not take action to enforce the marital dissolution agreement until approximately thirty months after Mr. Belcher's \$500 monthly payment obligation began on November 1, 2001, and found Ms. Belcher's delay in this regard to further indicate an accord and satisfaction between the parties. As this court has noted regarding credibility determinations made by a trial court,

The credibility of witnesses is a matter that is peculiarly within the province of the trial court. *See Bowman v. Bowman*, 836 S.W.2d 563, 567 (Tenn.Ct.App.1991). That court has a distinct advantage over us: it sees the witnesses *in person*. Unlike an appellate court--which is limited to a "cold" transcript of the evidence and exhibits--the trial court is in a position to observe the demeanor of the witnesses as they testify. This enables the trial court to make assessments regarding a witness's memory, accuracy, and, most importantly, a witness's truthfulness. The cases are legion that hold a trial court's determinations regarding witness credibility are entitled to great weight on appeal. *See, e.g., Massengale v. Massengale*, 915 S.W.2d 818, 819 (Tenn.Ct.App.1995). In the absence of unrefuted authentic documentary evidence reflecting otherwise, we are loathe to substitute our judgment for the trial court's findings with respect to the credibility of the witnesses.

Lockmiller v. Lockmiller, No. E2002-02586-COA-R3-CV, 2003 WL 23094418 at *5-6, 2003 Tenn. App. LEXIS 953, (Tenn. App. E.S., filed Dec.30, 2003); *see also Mosley v. Mosley*, No. M2003-01686-COA-R3-CV, 2003 WL 2439294 at *6 (Tenn. Ct. App. M.S., filed Oct. 29, 2004) (noting that "appellate courts routinely decline to second-guess the credibility determinations made by the trial court.").

Based on our review of the record, we do not find that the evidence preponderates against the trial court's conclusion that Mr. Belcher met his burden of demonstrating an accord and satisfaction between the parties. We hold that the trial court did not err in dismissing Ms. Belcher's petition and finding the divorce judgment satisfied by agreement of the parties.

IV. Public Policy

As a final matter, Ms. Belcher argues that any agreement between the parties that she would release Mr. Belcher from his obligation under the marital dissolution agreement in exchange for letting her move back in, and the parties resuming relations as husband and wife, should be held void

as against public policy. With regard to public policy, our Supreme Court has stated that "[t]he public policy of the State is to be found in its Constitution, its laws, its judicial decisions and the applicable rules of common law. *Nashville Ry. & Light Co. v. Lawson*, 229 S.W. 741 (Tenn. 1921), *Home Beneficial Association v. White*, 177 S.W.2d 545, 546 (Tenn. 1944).

The meaning of the phrase 'public policy' is vague and variable; courts have not defined it, and there is no fixed rule to determine what contracts are repugnant to it. The principle that contracts in contravention of public policy are not enforceable should be applied with caution and only in cases plainly within the reasons on which that doctrine rests. It is only because of the dominant public interest that one who, like respondent, has had the benefit of performance by the other party will be permitted to avoid his own promise.

* * *

In determining whether this contract is void as being in violation of public policy it is proper to consider the situation of the parties at the time the contract was made and the purposes of the contract. *Lippman v. Boals*, 79 Tenn. 489; *Sanders v. Sanders*, 40 Tenn.App. 20, 288 S.W.2d 473, 57 A.L.R.2d 932.

Hoyt v. Hoyt, 372 S.W.2d 300, 302-303 (Tenn. 1963); *Stutz v. Stutz*, No. E2004-01399-COA-R3-CV, 2005 WL 2016828 at *14 (Tenn. Ct. App. E.S., filed Aug. 23, 2005).

We hold that the accord and satisfaction reached by the parties in this case does not violate public policy and should not be held to be void.

V. Conclusion

For the aforementioned reasons, the judgment of the chancellor is affirmed and the case remanded for collection of costs below. Costs on appeal are assessed to the Appellant, Georgia Hammond Belcher.

SHARON G. LEE, JUDGE